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11 **BEFORE THE**

12 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

13 HEARING IN THE MATTER OF  
14 CALIFORNIA DEPARTMENT OF WATER  
15 RESOURCES AND UNITED STATES  
16 BUREAU OF RECLAMATION  
17 REQUEST FOR A CHANGE IN POINT OF  
18 DIVERSION FOR CALIFORNIA WATER FIX

19 **LAND'S JOINDER IN SUPPORT OF**  
20 **PROTESTANTS PCFFA AND IFR'S**  
21 **MOTION FOR RECONSIDERATION OF**  
22 **THE JULY 27, 2018 RULING ON PART 2**  
23 **REBUTTAL TESTIMONY STRIKING IN**  
24 **PART PCFFA-202 AND LAND-290**

1 **I. INTRODUCTION**

2 Protestant Local Agencies of the North Delta (“LAND”) supports and hereby joins Pacific  
3 Coast Federation of Fishermen’s Association and Institute for Fisheries Resources’  
4 (collectively, “PCFFA”) Motion for Reconsideration of the Hearing Officers’ July 27, 2018  
5 Ruling on Part 2 Rebuttal Testimony (“Ruling”). LAND concurs with PCFFA’s argument that  
6 the stricken portions of Noah Oppenheim (PCFFA-202) and Thomas Stokely (LAND-290) are  
7 responsive to Part 2 testimony of other witnesses and are therefore proper rebuttal testimony.  
8 Additionally, as explained below, Mr. Stokely’s stricken testimony does not constitute argument  
9 that belong in closing briefs.

10 **II. THE STRICKEN PORTIONS OF LAND-290 ARE CONSISTENT WITH OTHER**  
11 **ADMITTED TESTIMONY**

12 The Ruling states that large portions of Mr. Stokely’s testimony (LAND-290) should be  
13 stricken for failing to offer independent evidentiary value or introduce new evidence. (Ruling,  
14 pp. 1–2.) The Ruling likens Mr. Stokely’s testimony to legal argument that “more properly  
15 belongs in a closing brief.” (Ruling, p. 2.) As explained in PCFFA’s Motion for  
16 Reconsideration, Mr. Stokely’s testimony properly responds to Westlands’ witness Jose  
17 Gutierrez (WWD-15 and WWD-17). (See Motion for Reconsideration, p. 4-5.)

18 The Ruling also indicates that Mr. Stokely’s testimony was struck for offering  
19 impermissible legal argument. To the extent the testimony was struck for offering legal  
20 argument, the Hearing Officers have consistently admitted testimony that offered legal  
21 arguments, made by lawyers and non-lawyers alike. Just as one example, in Part 1, the Board  
22 accepted testimony from Maureen Sergent wherein Ms. Sergent discussed Petitioners’ water  
23 rights (DWR-53), which cited extensively to legal authorities and settlement agreements in  
24 support of her opinions (see, e.g. DWR-53, pp. 9-10, 17-23). Striking portions of Mr. Stokely’s  
25 testimony that provide legal and other support for the opinions he provides would be  
26 inconsistent with the Board’s prior decisions and actions and would improperly undermine the  
27 weight of Mr. Stokely’s testimony.

1 **III. CONCLUSION**

2 As explained above, and in PCFFA's Motion for Reconsideration, Mr. Oppenheim's and  
3 Mr. Stokely's testimony was responsive to Part 2 testimony of other witnesses, and was not  
4 impermissible legal argument. Therefore, PCFFA-202 and LAND-290 are proper rebuttal  
5 testimony and striking it would be inconsistent with the Board's prior decisions. Therefore, the  
6 Board should reconsider the July 27, 2018 Ruling and reinstate the stricken portions of  
7 PCFFA-202 and LAND-290.

8  
9 Dated: August 2, 2018

Respectfully submitted,

SOLURI MESERVE,  
A LAW CORPORATION

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12 Osha R. Meserve  
13 Attorney for Protestant  
14 Local Agencies of the North Delta  
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1 **STATEMENT OF SERVICE**

2 I hereby certify that I have this day, August 2, 2018, submitted to the State Water  
3 Resources Control Board and caused a true and correct copy of the following document:

4 **LAND'S JOINDER IN SUPPORT OF PROTESTANTS PCFFA AND IFR'S**  
5 **MOTION FOR RECONSIDERATION OF THE JULY 27, 2018 RULING ON**  
6 **PART 2 REBUTTAL TESTIMONY STRIKING IN PART PCFFA-202 AND LAND-290**

7 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current**  
8 **Service List** for the California WaterFix Petition Hearing, dated August 1, 2018, posted by the  
9 State Water Resources Control Board at  
10 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_water](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)  
11 [fix/service\\_list.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)

12 I certify that the foregoing is true and correct and that this document was executed on  
13 August 2, 2018.

14 Signature:  \_\_\_\_\_  
15 Name: Mae Ryan Empleo  
16 Title: Legal Assistant for Osha R. Meserve  
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